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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re L.S. et al., Persons Coming Under the
Juvenile Court Law.

FRESNO COUNTY DEPARTMENT OF
SOCIAL SERVICES,

Plaintiff and Respondent,

v.

MARIA M.,

Defendant and Appellant.

F084000

(Super. Ct. Nos. 19CEJ300312-1,
19CEJ300312-2, 19CEJ300312-3)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Fresno County. Elizabeth Egan, Judge.

John L. Dodd, under appointment by the Court of Appeal, for Defendant and Appellant.

Daniel C. Cederborg, County Counsel, and Carlie M. Flaughner, Deputy County Counsel, for Plaintiff and Respondent.

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* Before Hill, P. J., Franson, J. and Smith, J.

The juvenile court terminated the parental rights of Maria M. (mother) with respect to her three children, L.S., Jasmine S. and F.D., under Welfare and Institutions Code section 366.26.¹ On appeal, mother challenges the juvenile court's order terminating her parental rights based on the court's finding that the beneficial parent-child relationship exception to adoption did not apply. Finding no prejudicial error, we affirm.

STATEMENT OF THE FACTS AND PROCEDURE

Background

Mother has two children, L.S. (age four) and Jasmine (age two) (together the girls), whose father, Marcus S., was no longer in a relationship with mother and was incarcerated when this case began.

Mother had a history of exposing the girls to a "hostile and dangerous environment of ongoing domestic violence between herself and her significant others since 2015." Mother also had seven prior referrals to the department for general neglect, physical abuse, and emotional abuse. All but one were closed as inconclusive.

On August 12, 2019, Francisco D., mother's boyfriend, struck mother in the girls' presence, while mother was pregnant with his child.² Francisco D. had a criminal history involving violent behavior throughout California, including domestic violence, and had a dependency case in Los Angeles County in which he failed to reunify with his daughter. Francisco D. was arrested on August 28, 2019, for a probation warrant and a contempt of court warrant.

A social worker visited mother at home on August 31, 2019. Mother acknowledged being aware of Francisco D.'s criminal charges of child abuse, but denied

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise stated.

² Neither Marcus S. nor Francisco D. are a party to this appeal.

domestic violence and did not believe the prior charges against Francisco D. were true. Mother denied physical abuse by Francisco D., reporting only verbal arguments. And although she claimed to no longer be in a relationship with Francisco D., she did visit him in jail.

The Fresno County Department of Social Services (department) advised mother that they would seek a protective custody warrant for the girls. Marcus S. reported that he would be released in a month and requested custody of the girls.

The department filed a section 300 petition on September 5, 2019, alleging mother had a history of exposing the girls to a hostile and dangerous environment of ongoing domestic violence, and that the girls were left without provision for care and support due to Marcus S.'s incarceration. The girls were removed and placed in foster care.

Detention of the Girls

At the detention hearing September 10, 2019, the juvenile court found a prima facie case that the girls came within section 300, and a substantial danger existed if they were not removed from mother's custody. A jurisdiction and disposition hearing was set for October 22, 2019, and eventually rescheduled to December 12, 2019.

Jurisdiction and Disposition

A report prepared in anticipation of the jurisdiction and disposition hearing reported that mother and the girls had a positive visit on September 17, 2019, which the department described as "loving and playful."

On September 24, 2019, the girls were placed with a paternal great aunt. Mother, who was employed as kitchen staff at Fresno Community Hospital, was amenable to counseling, due to her "rough childhood and history of abusive relationships," and acknowledged that domestic violence was a concern.

The visit on September 25, 2019, "went well" and no concerns were reported. After the initial third party supervised visits at the beginning of October 2019, "some

concerns” with mother’s communication with the girls and maintaining her visitation times were reported.

Mother was reported to be on a wait list for a parenting class. She had been referred for a mental health assessment and, by September 26, 2019, had begun domestic violence counseling. Marcus S. remained incarcerated.

At the jurisdiction and disposition hearing held December 12, 2019, the juvenile court found, by clear and convincing evidence, that a substantial danger existed if the girls were returned home, and they were removed from parental custody. Mother’s progress was found to be moderate, Marcus S.’s minimal. Mother was ordered to have supervised visits: a minimum of once a week with L.S. and twice a week with Jasmine. The juvenile court ordered parenting classes, a domestic violence evaluation, and a mental health evaluation for mother. A six-month review hearing was scheduled for June 4, 2020.

Six-Month Review

The May 29, 2020, report prepared for the six-month review stated that mother was participating in services, maintaining employment, and living in a one-bedroom with her nondependent minor child, F.D., Francisco D.’s child. While mother had been compliant with her court-ordered services, she maintained a relationship with Francisco D. after his November 2019 release. On March 14, 2020, Francisco D. was arrested at mother’s residence for assault with a firearm and possession of a firearm by a felon. While Francisco D. told law enforcement that he lived with mother, mother denied it. After Francisco D.’s arrest, mother reported that she was no longer in a relationship with Francisco D. and had filed for a restraining order against him. While mother had said that the restraining order was granted on May 20, 2020, the court hearing on the restraining order was continued to June 10, 2020.

Marcus S. was released from jail at the beginning of October 2019 and was living with his family. He was inconsistent with his court-ordered services. The girls remained placed with Marcus S.'s relatives.

Mother completed her parenting program on February 13, 2020. She completed a mental health assessment and began therapy in November of 2019. She was about to be discharged from therapy when the incident with Francisco D. occurred, and therapy was continued. Mother completed the intake for domestic violence classes and was placed on a wait list. She was consistent with her participation in a child abuse intervention program and "Phoenix" program.

Marcus S. began his parenting program but was dropped for missing classes. Although he was participating in a batterers intervention program, he did not show for his substance abuse assessment.

Mother had been properly caring for the girls during her unsupervised visits, which began in February of 2020, although the department was concerned with her continued contact with Francisco D. at that point. Due to COVID, visits were telephonic or video in April and May, but back to in-person by late May of 2020. The department anticipated recommending liberal visits for mother following a meeting in early June 2020. Marcus S. visited the girls, but at times had scheduling conflicts, forgetfulness, and not showing up on time.

At the June 4, 2020, six-month review hearing, the juvenile court found that the department had provided reasonable services and mother's progress was moderate. Marcus S.'s progress was found to be minimal, and reunification services were continued. A 12-month review was scheduled for September 24, 2020.

Twelve-Month Review

The report prepared for the 12-month review stated that the department had liberalized mother's visits in July of 2020 and the children were "visibly doing well as they sought [mother's] attention." Mother reported that she felt she had worked through

many of the issues involving her rough childhood and abusive relationships. The department found that mother had made “significant progress” in resolving the issues that led to the removal of the girls, and that mother “has demonstrated the capacity and ability to complete the objectives” of her treatment plan and to provide for the well-being of the girls. However, the department stated that it would like to continue to monitor and work with mother to continue to support her in her efforts, and recommended that reunification services be continued for mother.

Petition for F.D.

On October 13, 2020, prior to the 12-month review hearing which had been continued, the department received a referral after police responded to a hit-and-run car accident in which Francisco D. was driving with F.D. in the car. After Francisco D. hit a parked car, he took F.D. out of his car seat and handed him to a stranger with a phone number, telling the stranger this was the alleged paternal grandmother’s phone number. Francisco D. then fled on foot. Mother was contacted and F.D. was released to her.

Mother spoke to the social worker at the home of Francisco D.’s brother and mother, paternal grandmother. Francisco D.’s brother reported that Francisco D. is not allowed into the home due to his history of making poor decisions.

According to mother, at the time of the earlier incident, she went to work and her friend Arlene (mother claimed not to know Arlene’s last name) was babysitting F.D. at mother’s home. Francisco D. went to the house and told Arlene he was F.D.’s father and mother was aware that he was picking up F.D. Mother acknowledged that Arlene was aware that the girls had been removed from her care due to “something” Francisco D. did. Francisco D. then took mother’s car, using a spare key he had apparently stolen. Paternal grandmother confirmed that she had received a telephone call from an unknown number and gone to pick up F.D. The social worker told mother that the incident was “indicative of her inability to demonstrate change over time and her inability to make safe decisions for her children.” The social worker also noted that, even though the girls were

removed from mother due to an incident with Francisco D., mother had not obtained legal custody of F.D. or filed a restraining order, despite repeated requests to do so. It was agreed that F.D. would remain with his paternal relatives.

The following day, Francisco D.'s brother reported that paternal grandmother was the primary caregiver while mother worked, and that mother had not been truthful with the department about her contact with Francisco D.'s family, as she was worried "it would not look good for her open case." Francisco D. had been released from jail about 36 hours prior to the incident, after an eight-month incarceration.

On October 15, 2020, the department filed a section 300 petition alleging F.D., now 11 months old, came within the provisions of section 300, subdivision (b), as mother had not obtained a custody order and had maintained contact with Francisco D., who was involved in a car accident with F.D. in the vehicle, placing the child at risk. In a first amended petition October 19, 2020, the department noted that F.D. had been detained.

Detention of F.D.

The report prepared for the detention hearing stated that F.D. continued to be placed with his paternal grandmother. While mother reported that she had filed for a restraining order against Francisco D. on October 14, 2020, the social worker was unable to verify that.

At the detention hearing October 20, 2020, mother appeared and F.D. was ordered detained and removed from mother's care. That same day, counsel for the girls filed a section 388 petition requesting mother's visits be returned to supervised because of the incident with F.D. A hearing on the section 388 petition was set for October 29, 2020, and a jurisdiction and disposition hearing for F.D. on November 17, 2020.

Jurisdiction and Disposition

The November 17, 2020, report prepared in anticipation of the jurisdiction and disposition hearing recommended mother be granted reunification services, but Francisco D. be denied services. The department noted that, while mother had expressed a

willingness to participate in services, she had not completed them and had therefore not made substantial progress towards ameliorating the conditions that brought her to the attention of the department. And while the department believed mother's prognosis for successful reunification was "good," if mother's reunification services for the girls were terminated, mother would meet the bypass criteria pursuant to section 361.5, subdivision (b)(10).³

A December 22, 2020, addendum report for the jurisdiction and disposition hearing recommended that the petition as to F.D. be found true and that mother's reunification services as to the girls be terminated. While mother had received family reunification services, including domestic violence treatment, she continued to place F.D. at risk by her contact with Francisco D. The department did not believe mother was making "active efforts to ameliorate the condition that brought her to the attention" of the department, although she was participating in child abuse prevention classes and her "Phoenix" program. Mother reported she "hates" Francisco D., stating he knew where she kept a spare key to the car and "did this to get back at me." F.D. appeared to be growing more comfortable in his current placement.

Mother reportedly filed a restraining order concerning Francisco D., but asserted she did not understand the process and had been "going back and forth" since October 2020 in trying to file the form. When reminded that she had been referred to the Marjaree Mason Center for help, mother stated that she had filed on her own online, had missed the initial court date, but wrote down the next date.

Mother reported she had "learned not to argue, how to communicate better, not to be so aggressive, not to be controlling ... [to] avoid[] people in her life such as family, not to use force, and to talk to her children and reward them with cookies and snacks."

³ Section 361.5, subdivision (b)(10) provides that reunification services need not be provided a parent who has failed to reunify with another sibling or half sibling of the child at issue.

Mother reported that she had support from coworkers and paternal relatives, but not from her family, and acknowledged that she needed to be “more protective.” The social worker believed mother showed very little follow through on obtaining a protective order and was not seeking the “appropriate help.”

At the December 22, 2020, jurisdiction hearing, the petition on F.D. was amended and the matter continued.

On January 26, 2021, the juvenile court terminated reunification services for both mother and Marcus S. concerning the girls. The juvenile court granted the department’s section 388 petition and mother was ordered weekly supervised visits with the girls. As for F.D., the juvenile court found the petition true and he was removed from mother’s custody. Mother was denied services as to F.D., pursuant to section 361.5, subdivision (b)(10). Mother was also ordered weekly supervised visits with F.D. No reunification services were ordered for Francisco D. A section 366.26 hearing for the girls and for F.D. was scheduled for May 26, 2021.

Visitation and Proceedings Pending Section 366.26 Hearing

The section 366.26 hearing was continued to July 27, 2021, because of lack of proper notice to Francisco D.

On July 22, 2021, mother filed a section 388 petition, requesting reinstatement of reunification services because she had completed additional programs and alleged the girls and F.D. (together the children) “have a strong emotional bond with their mother,” and termination of this bond would be detrimental to the children. Mother’s counselor at therapy had reported, in May of 2021, that mother continued to benefit from her counseling. According to the report, mother “reports good progress with her children and having healthy boundaries for them.”

The July 27, 2021, section 366.26 hearing was continued for lack of proper notice to Marcus S. The new hearing was set for October 5, 2021. The juvenile court denied

mother's section 388 petition, acknowledging that mother completing her programs was "good," but that "demonstrably changing behavior over time is two different things."

On October 5, 2021, mother requested a contested section 366.26 hearing, which was then set for January 4, 2022.

On December 21, 2021, Francisco D.'s counsel and mother's counsel both reported that they had denied visits with F.D. The caregiver did not want to facilitate visits at the visitation center because of COVID. The department was given discretion to make up the visits and look into the visitation issues.

The section 366.26 report, dated May 11, 2021, noted that F.D. had been placed with a paternal uncle and his husband, who wanted to adopt him.

Mother had obtained a restraining order against Francisco D., but it had expired on February 9, 2021.

The report stated that L.S., who was now six years old, was in kindergarten and receiving speech therapy and therapy to decrease her anxious behavior and increase her coping skills. Jasmine, now four years old, was eligible for Regional Center services and attended Head Start. The girls remained with their great-aunt. F.D. was said to be developing appropriately.

The report addressed the issue of adoption as to the children, looking first at the strength and bond between the dependent children and the caregiver and analyzing, in detail, the positive ways in which the caregiver provided "[s]tructure, [n]urturing, [c]hallenge and [e]ngagement" for each child. In talking about mother, the report stated that mother, "demonstrated [a] minimal ability to provide structure," but "demonstrated an appropriate ability to show nurture," giving numerous instances of her interactions with the children during a visit on May 4, 2021. The report also addressed how mother had "demonstrated an appropriate ability to challenge" the children during a visit on April 6, 2021. And the report addressed how mother had "demonstrated an appropriate ability to engage" the children during two observed visits.

The report also addressed the issue of “the child’s need for stability and continuity.” (Boldface omitted.) The social worker believed that it was in the children’s best interests to remain in the care and supervision of their prospective adoptive parents, with a permanent plan of adoption.

An addendum report dated January 4, 2022, stated that L.S. wanted to live with her aunt and did not want to go home to mother because of “the mean dad.” The children continued to have weekly supervised visits with mother, who was “consistent” with both in person and virtual visits. The girls reportedly did not want to participate in the virtual visits for the full hour. The children were visiting each other weekly; the caregivers anticipated “at least quarterly” visits in the future. Neither Marcus S. nor Francisco D. had visited. The department reported that the children considered “the prospective adoptive parents to be their family.”

Section 366.26 Hearing

At the section 366.26 hearing January 4, 2022, mother was present, via Zoom. Mother’s counsel stated that mother objected to termination of her parental rights, based on the parent/child relationship exception. Mother then testified that she had not been provided all of her weekly visits, but had attended all scheduled visits. Visits with F.D. had been virtual since the previous summer, except for the most recent one. The virtual visits were difficult because of F.D.’s young age, but went well under the circumstances. At the most recent visit, F.D. had trouble getting a puzzle correct, and came to her for help. Mother described the two as having a “bond.” Mother described the bond as directing F.D. to perform some activities and helping him with them. Mother testified that when she visits with F.D. he comes to her for help and he wants to stay with her after visits are over.

When mother visited all three children together, they all run to her and hug her. They were excited to see her, but she had not been able to see all of them together for

some time. She either had issues with the caregiver not logging the children on virtually or requiring the visits be via “Facebook Messenger,” which mother did not have or use.

Mother believed terminating her parental rights would lead to emotional issues for the children, as all of the children had lived with her since birth until they were removed.

Mother testified that, when she was able to have unsupervised visits, she was able to care for all of them, redirect them if required, and take care of any problems that arose. When her visits were supervised by the caregivers, mother was uncomfortable and believed the caregivers had a “lot of hate” towards her, as told to her by the girls. Mother summed up her testimony by stating:

“I’m a changed person. I’ve done what I had to do. I would like to see my kids more. I mean, I’m not a bad person. I’m also human. I work hard. I do what I got to do for myself and for my baby that I have at home. I should be able to see my girls and my ... other baby.”

In argument, the department relied on the reports for its position. It argued, as to the beneficial parent/child relationship exception:

“I would submit to the Court there has not been any evidence provided to the contrary that would show that an exception to adoption would apply in this case. I do not believe that the burden has been met to show that the beneficial relationship exception would apply proving that it would be detrimental to the children and ongoing contact with the parents is necessary and would outweigh any of the benefits that adoption could provide to them. I do not believe that that burden has been met. I have not heard anything today that would suggest that the bond with any of the three parents is so sufficient that it would outweigh the permanency and stability that adoption would provide for these minors.”

Counsel for the minors agreed that it would not be detrimental for the children to move forward with adoption.

Counsel for mother acknowledged that mother understood that her children would not be returned to her care, but that she had a positive emotional relationship with them and that severing that relationship would be detrimental to the children. Citing our Supreme Court’s decision in *In re Caden C.* (2021) 11 Cal.5th 614 (*Caden C.*), counsel

argued that mother had met the first prong of the exception by visiting the children regularly, “clearly” showing she had a “positive relationship” and “strong bond” with the children. As to the other two prongs of the exception, counsel argued further that the quality of the children’s lives with the caregivers was not the issue and a comparison with the caregivers was not relevant to the hearing. Instead, the issue was the impact termination of parental rights would have on the children and whether the children would benefit from that continued relationship. Counsel asked for legal guardianship as opposed to adoption for the children.

In rebuttal, counsel for department recited the three elements of the parent/child relationship exception and argued there was no evidence before the juvenile court that severing the relationship between mother and the children would be detrimental, as evidenced by the fact that, despite an interruption of visits between mother and the girls, they had not shown any “acting out in school, any anxiety, depression.” Counsel also noted that, while the children’s caregivers had agreed to allow the siblings to meet after adoption was finalized, “that’s not something the Court could consider today in making its ruling.”

Following argument, the juvenile court found, by clear and convincing evidence, that the children were adoptable, that guardianship was not appropriate, and that the children had been with prospective adoptive parents — “over a year in one case and over two years in another” — who were committed to adoption.

While the juvenile court found that mother had maintained regular visitation and that the children were reported to enjoy the visitation:

“The Court, however, must balance the benefit of the parent/child relationship and the children’s need for stability and consistent[c]y. No matter how loving and frequent the contact, notwithstanding the existence of an emotional bond with the children, the parents must show they occupy the parental role in the [children]’s life. The children have stated and demonstrated that they look to their prospective adoptive parents and not their mother for the security and guidance ... of the parental relationship.

[L.S.] has articulated that her mother was gone to her clinician despite seeing her frequently. She recently affirmed with the social worker that she wanted to live with her aunt as she feels safe with her aunt and is afraid of living in her mother's home. Living with the prospective adoptive parent for a substantial percentage of their life, both girls have begun to show progress in their earlier developmental deficiencies. As to [F.D.], a child of such young and tender age, who likewise has spent half his life with his prospective adoptive parents and looks to them to provide the comfort and care of the parental relationship.

“The relationship between mother and her children in this case, though friendly and happy and playful, has not risen to be a compelling reason for determining the termination of parental rights would be detrimental. The children have not exhibited behavior problems at separation, have not regressed in behavior. Just the opposite. ...And that relationship with mother does not outweigh their need for the stability and secure placement that an adoptive home would provide them. There is information ... in the reports that the prospective adoptive parents support the sibling visitation and ... I'm noting it now.”

The juvenile court continued, stating that it was “not about mother and her being a bad person. This is about the children, their stability and consistency of their placement and that's what the Court is basing its ruling upon.” The juvenile court then terminated parental rights.

DISCUSSION

Mother contends the juvenile court erred by considering inappropriate factors when it determined that the beneficial parent-child relationship exception to adoption did not apply. She argues the juvenile court improperly considered irrelevant and improper factors “which find no support in either statutory or case law,” specifically the lengthy assessment of the strength and bond between the children and their caregivers, as chronicled in the department's report. Mother contends that in doing so, the juvenile court was in violation of the recent Supreme Court decision in *Caden C.*, *supra*, 11 Cal.5th 614. We find no prejudicial error.

Legal Principles

At a section 366.26 hearing, when the juvenile court finds by clear and convincing evidence the child is adoptable, it is generally required to terminate parental rights and order the child be placed for adoption unless a statutory exception applies. (§ 366.26, subd. (c)(1).) One of the statutory exceptions is the beneficial parent-child relationship exception, which applies when “[t]he court finds a compelling reason for determining that termination would be detrimental to the child” where “[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (*Id.*, subd. (c)(1)(B)(i).)

A parent claiming an exception to adoption has the burden of proof to establish by a preponderance of evidence that the exception applies. (*In re Melvin A.* (2000) 82 Cal.App.4th 1243, 1252.) Thus, the parent must prove three elements in order to prevail under the beneficial relationship exception: “(1) regular *visitation and contact*, and (2) a *relationship*, the continuation of which would *benefit* the child such that (3) the termination of parental rights would be *detrimental* to the child.” (*Caden C.*, *supra*, 11 Cal.5th at p. 631, original italics.) In assessing whether termination would be detrimental, the juvenile court “must decide whether the harm from severing the child’s relationship with the parent outweighs the benefit to the child of placement in a new adoptive home.” (*Id.* at pp. 631-632.) When the parent meets this burden, the exception applies such that it would not be in the child’s best interest to terminate parental rights and the court selects a permanent plan other than adoption. (*Id.* at pp. 636-637.)

The first element of the beneficial relationship determination asks the “straightforward” question of whether the parent visited consistently, considering the extent permitted by court orders. (*Caden C.*, *supra*, 11 Cal.5th at p. 632.) The focus is on the best interest of the child as opposed to punishing or rewarding parents for good behavior in maintaining contact. (*Ibid.*)

The second element of the exception asks whether the child would benefit from continuing the relationship. (*Caden C.*, *supra*, 11 Cal.5th at p. 629.) The parent-child relationship “may be shaped by a slew of factors, such as ‘[t]he age of the child, the portion of the child’s life spent in the parent’s custody, the “positive” or “negative” effect of interaction between parent and child, and the child’s particular needs.’ ” (*Id.* at p. 632, quoting *In re Autumn H.* (1994) 27 Cal.App.4th 567, 576.) The juvenile court’s focus should again be on the child, and it “must remain mindful that rarely do ‘[p]arent-child relationships’ conform to an entirely consistent pattern.” (*Caden C.*, *supra*, at p. 632.)

When considering the third element, courts must determine “how the child would be affected by losing the parental relationship — in effect, what life would be like for the child in an adoptive home without the parent in the child’s life.” (*Caden C.*, *supra*, 11 Cal.5th at p. 633.) Under this element, the court is again guided by the child’s best interest, but in a “specific way: it decides whether the harm of severing the relationship outweighs ‘the security and the sense of belonging a new family would confer.’ ” (*Ibid.*) “ ‘If severing the natural parent/child relationship would deprive the child a substantial, positive emotional attachment such that,’ even considering the benefits of a new adoptive home, termination would ‘harm[]’ the child, the court should not terminate parental rights.” (*Ibid.*) “When the relationship with a parent is so important to the child that the security and stability of a new home wouldn’t outweigh its loss, termination would be ‘detrimental to the child *due to*’ the child’s beneficial relationship with a parent.” (*Id.* at pp. 633-634.) “In many cases, ‘the strength and quality of the natural parent/child relationship’ will substantially determine how detrimental it would be to lose that relationship, which must be weighed against the benefits of a new adoptive home.” (*Id.* at p. 634.)

As explained in *Caden C.*, the Court of Appeal had held “that because the parent continued to struggle with substance abuse and mental health issues and because of the risks of foster care and benefits of the potential adoptive home, no reasonable court could

find the child’s relationship with his parent outweighed the benefits of adoption.” (*Caden C.*, *supra*, 11 Cal.5th at pp. 625-626.) Rejecting that conclusion, our Supreme Court found “[t]he Court of Appeal did not explain how the parent’s struggles related to the specific elements of the statutory exception: the importance of the child’s relationship with the parent or the detriment of losing that relationship.” (*Id.* at p. 626.) A parent’s struggles with issues that led to dependency were determined to be relevant only to the extent they inform whether the child would “benefit from continuing the relationship and be harmed, on balance, by losing it[.]” (*Id.* at p. 638.)

Standard of Review

Appellate courts review a juvenile court’s ruling on the application of the beneficial parent-child relationship exception using a “hybrid” standard. (*Caden C.*, *supra*, 11 Cal.5th at p. 641.) The substantial evidence standard applies to the first two elements of regular visitation and existence of a beneficial relationship. (*Id.* at pp. 639-640.) The juvenile court’s decision as to the third element — whether termination of parental rights would be detrimental to the child — is reviewed for an abuse of discretion. (*Id.* at p. 640.) “Review for abuse of discretion is subtly different, focused not primarily on the evidence but the application of a legal standard. A court abuses its discretion only when ‘ “ ‘the trial court has exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination.’ ” ’ ” (*Id.* at p. 641.)

Mother contends de novo review is required in this case. We disagree, as evidenced by our analysis below that the juvenile court did not misapply or misunderstand the law. (See, e.g., *In re Charlissee C.* (2008) 45 Cal.4th 145, 159.)

Analysis

In the present case, it is undisputed by the parties that mother met the first prong of the analysis — whether she had regular visitation and contact with the children. The disputed question is whether mother demonstrated the children have a “substantial, positive emotional attachment” to her such that they would benefit from continuing the

relationship. Mother contends she met her burden of establishing this element and contends the juvenile court erred in relying on factors held improper in *Caden C.*

Mother first addresses at length the report filed by the department in which it described how mother engaged, challenged, provided structure for and nurtured the children. Similar information was provided regarding the caregivers. Mother contends this was used improperly by the juvenile court to determine who was the better parent and who should be caring for the child.

We disagree. Whenever a dependency case is referred for a section 366.26 selection and implementation hearing, the juvenile court is required to direct the child welfare agency to prepare an assessment as part of its report to the court. The focus of this agency assessment is upon factors that relate to adoptability. (*In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1343.) And while the factors emphasized in the report do not explicitly relate to assessing a beneficial relationship exception to adoption, the information in the assessment provides important information for the court to decide the issues from the totality of the evidence.

Here, nothing in the juvenile court's ruling specifically referenced this analysis, and the juvenile court made it clear that, while it was considering the reports submitted for the section 366.26 hearing, it was also considering the testimony and argument at the hearing. And, it should be noted that mother's counsel specifically cautioned the juvenile court at the section 366.26 hearing that the quality of the children's lives with the caregivers was not the issue in addressing the exception and a comparison with the caregivers was not relevant to the hearing.

Mother next contends the juvenile court appears to have made no specific findings whether mother had a beneficial relationship with the children, as required to establish the second element. (*Caden C., supra*, 11 Cal.5th at p. 631.) While section 366.26, subdivision (c)(1)(D) requires the juvenile court to "state its reasons in writing or on the record" in concluding that termination of parental rights would be detrimental to the

child, the juvenile court is not required to recite specific findings when it concludes that terminating parental rights would *not* be detrimental to the child. (*In re A.L.* (2022) 73 Cal.App.5th 1131, 1156.) Here, the juvenile court’s orders for adoption and ultimate termination of parental rights reveal an implied finding that mother did not have a beneficial relationship with the children sufficient to uphold the beneficial relationship exception. There was no requirement that it be in writing. Although a trial court’s statement of its findings or an explanation of the reasons for its decision may be helpful in conducting appellate review, it is not a legal requirement. (*Ibid.*) Thus, the juvenile court did not err in failing to further explain the basis for its decision.

Mother further argues the juvenile court accepted factors deemed irrelevant by *Caden C.*, because the juvenile court stated that mother failed to show she had a “parental relationship” with the children and instead showed she had more of a “friendly and happy and playful” relationship. As discussed, “the juvenile court is required to examine the record to ascertain whether the parent has proven by a preponderance of the evidence that ‘the child has a substantial, positive, emotional attachment to the parent.’ ” (*In re B.D.* (2021) 66 Cal.App.5th 1218, 1227; *Caden C.*, *supra*, 11 Cal.5th at p. 636; *In re Katherine J.* (2022) 75 Cal.App.5th 303, 319 [“*Caden C.* requires juvenile courts to do more than summarily state that a parent has not occupied a parental role in his child’s life”].) Here, at one point in its ruling, the juvenile court stated, “No matter how loving and frequent the contact, notwithstanding the existence of an emotional bond with the children, the parents must show they occupy a parental role in the children’s life.” The juvenile court then went on to note how the children had looked to their prospective adoptive parents to meet their parental needs.

These statements, without more, left open the possibility the court considered improper factors in finding the parental-benefit exception did not apply. As the court in *In re L.A.-O.* (2021) 73 Cal.App.5th 197, explained: “Unfortunately, the words ‘parental role’ standing alone, can have several different meanings.... [¶] They can mean being a

good parent—nurturing, supportive, and guiding. *Caden C.*, however, tells us that the parental-benefit exception does not require being a good parent; it does not require that the parent have overcome the struggles that led to the dependency, and it does not require that the parent be capable of resuming custody.” (*Id.* at p. 210; see *Caden C.*, *supra*, 11 Cal.5th at p. 634.)

If the juvenile court here equated “parental role” with mother’s ability to care for the children, that would have been an inappropriate consideration. (See *In re L.A.-O.*, *supra*, 73 Cal.App.5th at pp. 211-212 [juvenile court’s “terse” ruling the parents had “‘not acted in a parental role in a long time’ ” “seems to have meant that they were not capable of taking custody, or had not been good parents, or had not been providing necessary parental care,” which would have been improper considerations]; *In re J.D.* (2021) 70 Cal.App.5th 833, 864-865 [juvenile court’s “conclusory” finding on the second element was “problematic” because the reviewing court could not “be sure whether the juvenile court’s determination that [the] mother did not occupy a ‘parental’ role encompassed factors that *Caden C.* deem[ed] irrelevant”]; *In re B.D.*, *supra*, 66 Cal.App.5th at pp. 1230-1231 [in finding the parents “failed to show the existence of a parental relationship,” the juvenile court’s statement the grandmother provided for the children’s daily needs indicated the court “considered improper factors at the second step of the analysis”]; see also *In re D.M.* (2021) 71 Cal.App.5th 261, 270 [by equating “parental role” with attendance at medical appointments and understanding the children’s medical needs, the juvenile court considered inappropriate factors]; compare *In re Katherine J.*, *supra*, 75 Cal.App.5th at pp. 319-320 [although the juvenile court “concluded that father ‘has not occupied a significant parental role,’ ” the court “also explained what it meant by this” by finding that the father’s unresolved substance abuse and violence “destabilized” his daughter’s life and “fatally” compromised his attempts “to maintain a strong, positive emotional attachment” with her].)

Here, contrary to mother's assertion, the record does not indicate the juvenile court relied only on mother's "parental role" when considering whether she met her burden of proving the second element—whether the children would benefit from continuing their relationship with mother. Although the juvenile court mentioned the "parental role," it considered the emotional connection between the children and mother and determined the relationship was not significant enough to support a finding the children had a bond with mother, meaning they were not significantly attached to her. The juvenile court's finding that mother's relationship with the children was not more than friendly, happy and playful was relevant, as the children's relationship with a parent must be "surely more significant than that of a 'mere friend or playmate.'" (*In re J.D.*, *supra*, 70 Cal.App.5th at pp. 864-865.) We note that " "[w]e must indulge in every presumption to uphold a judgment, and it is [appellant's] burden on appeal to affirmatively demonstrate error—it will not be presumed." " (*In re A.L.*, *supra*, 73 Cal.App.5th at p. 1161.) Mother has not demonstrated error, and it will not be presumed here.

Even if the juvenile court was influenced by misconceptions regarding whether there was a "parental relationship," and we accept that mother established the second prong of the exception, the juvenile court acted well within its discretion when it found, in addressing the third prong, that the children would not suffer detriment upon termination of the parent-child relationship. On this record, the juvenile court could not have reached a different conclusion in balancing the harm of losing the parental relationship against the benefits of placement in an adoptive home.

Mother presented no evidence that terminating the children's relationship with her "would be detrimental to the [children] even when balanced against the countervailing benefit of a new, adoptive home." (*Caden C.*, *supra*, 11 Cal.5th at p. 636.) Mother, who had the burden of proving the applicability of the parental-benefit exception (§ 366.26, subd. (c)(1)(B)(i); *Caden C.*, *supra*, at p. 635), did not introduce any evidence that terminating her relationship with the children would be detrimental to them.

Here, mother testified only minimally that the children were happy to see her at visits and sad when visits ended. On the other hand, the evidence showed that the children had not exhibited behavior problems at separation from mother, and had not regressed in behavior, but had instead thrived. L.S. has articulated that her mother was gone to her clinician despite seeing her frequently, and prior to the section 366.26 hearing affirmed with the social worker that she wanted to live with her aunt as she feels safe there and is afraid of living in her mother's home. Memories of mother's abusive relationships with both L.S.'s father, Marcus S., and witnessing abuse by Francisco D. would not have been positive experiences for the girls. (See, e.g., *In re A.L.*, *supra*, 73 Cal.App.5th at p. 1159 [evidence the father's prior substance abuse had a negative impact on the child "was germane to the court's assessment of " 'the strength and quality' " of the parent-child relationship"].) Thus, even if the juvenile court had considered whether the children formed a strong attachment to mother and disregarded any consideration of mother's inability to provide for the children's daily needs, it is not reasonably probable the court would have found mother met her burden of the parental-benefit exception.

Mother argues the juvenile court's error was not harmless because the social worker reported that mother's visits were appropriate and that she was able to appropriately engage and interact with them. That evidence, however, showed only that mother may have formed an attachment to the children, not the other way around. (See *Caden C.*, *supra*, 11 Cal.5th at p. 632 [considering the factors relating to the child and the child's particular needs "properly focuses the inquiry on the child"]; *In re B.D.*, *supra*, 66 Cal.App.5th at p. 1230 ["it is critical for the juvenile court at the second step of the analysis to consider the evidence showing whether the parent's actions or inactions 'continued or developed a significant, positive, emotional attachment from child to parent' "].)

Mother also faults the department for not providing more information about more visits and interactions with the children. To the extent mother is challenging the adequacy

of the social worker’s report, she forfeited her challenge by not raising it in the juvenile court. (See *In re S.B.* (2004) 32 Cal.4th 1287, 1293 [“a reviewing court ordinarily will not consider a challenge to a ruling if an objection could have been but was not made in the trial court,” and “the appellate court’s discretion to excuse forfeiture should be exercised rarely and only in cases presenting an important legal issue”]; *In re G.C.* (2013) 216 Cal.App.4th 1391, 1399 [father forfeited his right to challenge the adequacy of a report for the selection and implementation hearing because he failed to raise the issue in the juvenile court].)

We find no abuse of discretion on the part of the juvenile court in its determination on the third element, “how the child would be affected by losing the parental relationship – in effect, what life would be like for the child in an adoptive home without the parent in the child’s life.” (*Caden C.*, *supra*, 11 Cal.5th at p. 633.) Under this element, the court is again guided by the child’s best interest, but in a “specific way: it decides whether the harm of severing the relationship outweighs ‘the security and the sense of belonging a new family would confer.’ ” (*Ibid.*)

The evidence in the record weighed in favor of the preferred permanency option of adoption. The girls had been in successful placement since September of 2019, and F.D. since October 2020, both with prospective adoptive parents committed to the plan of adoption. The children all recognized their respective adoptive parents as their primary caregivers. While the children were too young to provide a statement on adoption, L.S. had expressed a desire to stay where she was.

We do not find that the juvenile court abused its discretion by relying on impermissible factors. The juvenile court’s ruling on the exception did not consider whether mother was ready for the children to return to her, and there is no indication that the juvenile court relied on mother’s “continued struggles” to bar the parent-child relationship exception. Viewed in its context, the juvenile court considered the proper factors of the children’s need for stability and the effect of interactions with mother. On

balance, it concluded that ongoing interactions while mother continued making positive changes to her life was not as beneficial as their need for stability.

We reject mother's claim that the juvenile court misapplied or misinterpreted the law and find no error in its finding that the beneficial parent child relationship exception to adopt did not exist.

DISPOSITION

The juvenile court's orders are affirmed.